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ABSTRACT

The late fifties and early sixties were periods of great strides for blacks in America. At the same time, Hispanics, American Indians, women, the aged, and the physically and mentally handicapped came forth to meet the challenge of discrimination. This challenge will continue to face the United States. The argument that Americans need time to adjust to changes has resulted in the pitting of minority groups against each other in the battle for equality. The United States cannot afford such confrontations in the eighties. In a "person-centered" society where concerns for a "higher destiny," "compassion," and "humaneness" guide public policy, there is no need to battle one another over who will be next in line to achieve equality. (Author/MK)

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# Department of Justice

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STANDING IN LINE FOR EQUALITY

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Before the

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STANDING IN LINE FOR EQUALITY

Dean Wydick, members of the law faculty, and you of the school study body, I want to thank you for asking me to deliver this year's Martin Luther King, Jr. Lecture. I want to thank Professor Jones and Linda Blackwell especially. Dr. King is properly known best for his great accomplishments on behalf of blacks. Toward the end of his life, however, he was moving, as evidenced by his stance against the war in Vietnam and his growing concern for the plight of the poor of all races and colors, to a larger vision of what was needed to bring true equality to our country. I hope that my remarks today manage to capture at least some of the spirit of Dr. King's final dream.

The late fifties and sixties were periods of great strides for blacks in America; the decade of the seventies was a time during which the strivings of blacks for equality stirred other groups to fight to secure their rights, as well. Hispanics, American Indians, other ethnic minorities, women, the aged, the handicapped and the institutionalized all came forward to challenge values and stereotypes that for so long had deprived them of the full measure of participation in our society, of basic human dignity to which they were entitled.

In the eighties, we, as a people, will be confronted with a challenge surpassing any we faced in the past thirty years. Simply put, the question is whether we can continue efforts to bring full equality to black Americans, over a quarter century

after Brown v. Board of Education, meet the legitimate demands of groups given protection under federal civil rights laws already and expand such protections to newer groups, such as gays, also seeking justice.

I may be alone in this, but I see no alternative for America but to meet this challenge. We cannot complete another decade with blacks and other ethnic minorities bringing up the rear in education, employment, housing and health care, experiencing conditions that fall below minimum standards of decency. We cannot complete another decade with women still struggling to obtain training that they believe will permit them to compete for jobs on an equal basis only to find that sex discrimination still makes it an uphill fight. We cannot complete another decade forcing people to leave their jobs once they reach 65 or 70 irrespective of whether they are continuing to contribute to society, asking many to survive instead upon fixed incomes in an inflationary economy. We cannot end another ten years telling the deaf, the blind, and persons confined to wheel chairs to wait a few more years before they can attend school, enjoy public accommodations and transportation, obtain meaningful jobs and adequate housing just like everyone else. How much longer can we continue to "sentence" law offenders, juveniles, the elderly, the mentally ill and retarded to institutions where they are subjected to conditions of confinement unfit for animals? How

can we continue to deprive some people of the ability to earn an honest living because of their sexual preferences?

The conventional wisdom, of course, requires me to respond that, while all of these ends may be desirable, our society has to take on such problems one by one. The American people need time to adjust to changes of this kind. You will recall President Eisenhower's comment around the time of the Little Rock crisis in the late fifties that people's hearts would have to be changed before integration of the public schools gained acceptance. And, most important, I am constrained to acknowledge that granting rights sought by all these groups would increase enormously the costs of running our society. There is, so the argument goes, kind of a "waiting line" for equality in America.

Unfortunately, all too many of us have bought these arguments and allowed blacks to be pitted against Hispanics, racial and ethnic minorities against women, young against old, and everyone else against the handicapped in battles for what we are led to believe is the right to get a slice of a static, if not shrinking, economic and social "pie." We spend our time debating whether women should be allowed to participate in "minority" assistance programs, whether Hispanics are a minority since they are classified anthropologically as Caucasians, whether Asian-Americans deserve to participate in affirmative action programs, which minority group is most discriminated against, and so forth and so on. We accept the cynicism of political expediency:

"Blacks were the symbol of the sixties, Hispanics are the symbol of the seventies," one nationally-known public official was reported to have said to explain his program priorities. We take on the cocktail party values of "radical chic" where Hispanics are "out," Indians are "in" or any other combination depending on which week it happens to be and who is giving the party. We play the games of grant proposal writing or selecting these topics: "you can get money to do a project on women but not on minorities" or "if you want research funds, describe your study as one on special education, not on desegregation."

We cannot permit this divisiveness to continue into the eighties. Instead of fighting one another, we ought to be fighting discrimination; we ought to be questioning the social and economic institutions that have created and maintained a public order in which some folk are more equal than others. Discrimination is <u>the</u> common enemy. Whether it be racism, sexism or some other form of bigotry, discrimination is a rejection of a person's individual worth in favor of invidious generalizations and stereotypes. There is no such thing, in my estimation, as a piecemeal attack upon discrimination. Where one manifestation of discrimination is attacked successfully, it tends to reappear shortly in another form. It should not be surprising that where one finds racism, sexism is often present, as well. For example, my staff did a survey of sex discrimination in the federal government, including the extent to which agencies perpetuated sex stereotypes. We found that brochures which

showed women always in domestic settings, never as professionals, also depicted minorities in menial capacities, to the extent that minorities were represented at all. It is not uncommon for us to find in our investigations that employers with a history of racial discrimination in hiring and promotion also limit the opportunities of females for advancement.

Moreover, where a discriminatory technique is used to disadvantage one minority group, it is likely to turn up at a later date being used against another group. Some of you may be familiar with the case of Gomillion v. Lightfoot, a Supreme Court decision in the early sixties outlawing an attempt by officials of Tuskegee, Alabama to gerrymander most of its black residents out into the county so that they would be able to exercise their newly-won franchise where it wouldn't do any harm to the status quo. In its opinion, the Court remarked that the facts of Gomillion were unusual and unlikely to recur elsewhere. And legal commentators have for years pointed out the unique character of Gomillion's fact pattern. You will understand my surprise, therefore, when I learned about a year and a half ago that Menominee Indians in Wisconsin had been gerrymandered out of one county and into another while whites living across the street were not. We went to court on behalf of the Menominees and obtained an injunction against the redistricting scheme. Our precedent? -- Gomillion v. Lightfoot!

Sometimes, as I review the many investigations and lawsuits we handle in the Civil Rights Division, I am frequently almost overwhelmed by attacks of deja vu, hearing the same temporizing phrases that public officials once "trotted out" in the South to justify racial segregation now falling from the lips of those unwilling to yield to the legitimate demands for fairness of other minorities, women, the handicapped and the institutionalized. You fill in the blanks:

-- "We would like to have a _____ on our staff but we don't think that such a person would fit in at this time. Certainly they wouldn't want to go where they are not welcome."

-- "None of the _____ have ever told us that they were unhappy with this arrangement. We just assumed that we were doing the right thing."

-- "We are looking for an exceptionally qualified _____ because we wouldn't want to take on as our first _____ someone who couldn't make the grade. It would make it harder to accept other _____ in the future."

-- "We never knew that _____ were interested in being _____."

-- "Letting _____ into the neighborhood will lower property values."

-- "We may have problems with our _____ but the solution has to be found locally not imposed by the federal government."

School officials in segregated systems routinely explained that they wanted blacks to attend traditionally white schools but their parents were afraid to send them. Administrators of large, isolated institutions for the mentally retarded now justify keeping people in such inadequate and damaging settings rather than placing them in community facilities because the parents of the residents are afraid to have their children relocated. I.Q. tests were used around the turn of the century to confirm theories that recent Eastern European immigrants were genetically inferior to Western Europeans who settled in America in the 18th and early 19th centuries. All too recently, according to a federal district judge here in California, such tests were used to condone relegating disproportionate numbers of black and Hispanic children to educationally "dead-end" classes for the mentally retarded. Hand-me-down athletic equipment that once went from white teams to black teams now goes from male teams to female teams.

Discrimination occurs with respect to minorities, women and other groups even where so-called "equal treatment" is involved because the equality principles are reflective of outmoded values and stereotypes. The consequence of the equal treatment is usually that women and minorities somehow end up losing the job,

getting the university rejection slip or being denied credit. High scores on paper and pencil examinations don't tell very much about a person's ability to be a good police officer, to act rationally, calmly and quickly in times of emergency, to render compassionate assistance to people in need. Yet such examinations are still used widely to make employment decisions that disproportionately exclude minorities. Physical agility tests and height and weight requirements established without a careful analysis of the job do not help one identify good firefighters. But such screening devices are routinely used. The effect: well over 90% of the women of America are deprived of an opportunity to compete fairly for such jobs. It bears noting that many of these requirements were introduced by employers at the point when minorities and women were beginning to seek such jobs, even though white males had long been hired without having to meet similar standards. Some creditors still refuse to consider alimony and child support as income for purposes of evaluating loan or mortgage applications. While the standard is supposedly applied "evenhandedly" to men and women, I need not tell you which group has the greater difficulty obtaining financing on such terms. We are slowly coming to an awareness as a nation that employment tests must be able to determine who can do the job, not who can, in the abstract, score high on a written examination. We are beginning to

understand that standards for loans and mortgages should test individual creditworthiness, not perpetuate stereotypes of the financially unstable divorcee.

But the eighties will present us with even harder questions of equality. For instance, we all probably understand and accept the concept of "equal pay for equal work" irrespective of sex. That is the basic principle underlying the Federal Equal Pay Act. So if a man and a woman do essentially the same job -- custodial work, for example -- they deserve the same pay, even though one may be called a janitor and the other, a matron. But what about court stenographers (historically, a female occupation) and courtroom guards (historically, a male occupation)? Suppose the guards are, as a rule, paid more than the stenographers. Their jobs are quite different. But is the guard's job of greater intrinsic value to the society than the stenographers? Did anyone really conduct this analysis before establishing pay scales? Or were the scales reflective of stereotype views at that time in the job market as to the relative worth of men's v. women's work? Shouldn't there be such an analysis?

Turning to another problem area, why shouldn't the handicapped be given full federal protection against discrimination in employment (where now only federal agencies, grantees and contractors are required to act non-discriminatorily) and in housing, which

minority groups and women already enjoy? And shouldn't the society-at-large, not handicapped people, bear the burden of providing reasonable accommodations so that they can participate more fully in our daily life?

Why should we accept the proposition of "last hired, first fired" in times of economic retrenchment when we know full well that minorities and women will be the ones laid off? Shouldn't such "crunches" in the job picture be shared by all workers in order to reduce the discriminatory impact upon groups only recently allowed to compete in the labor market?

I submit to you that the answers to these questions and others like them in the eighties will not come from a process of slicing the "pie" more thinly or giving slices to some but not other groups. They will come from a process of reordering our values that Martin Luther King, Jr. described so movingly in his book, Where Do We Go From Here: Chaos or Community? He wrote:

> [T]here is a need for a radical restructuring of the architecture of American society ... Our economy must become more person-centered than property - and profit-centered.

And, though he was speaking specifically of the role he thought blacks must play in the process of restructuring, I think his words apply to all of us who covet justice.

> "Let us," King said, "be those creative dissenters who will call on our beloved nation to a higher destiny, to a new plateau of compassion, to a more noble expression of humaneness."

For in a "person-centered" society where concerns for a "higher destiny," "compassion" and "humaneness" guide our public policy, we need not battle one another over who will be next in line to get equality.

Thank you.